IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 708 of 2001

with

CRIMINAL APPEAL No 793 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMVILAS @ RAJU BALESHWAR SHUKLA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 708 of 2001

MS BANNA S DUTTA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

2. Criminal Appeal No. 793 of 2001

MS BANNA S DUTTA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/10/2002

ORAL JUDGEMENT

1. These Crminal Appeals arise out of judgment and order rendered by learned Additional Sessions Judge, Valsad (Camp), in Sessions Case No.124 of 1999 of June 28, 2001, convicting the appellants for offences punishable under Sections 395 and 397 of Indian Penal Code and sentencing them to undergo rigorous imprisonment for a period of five years and imposing a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months.

2. The facts of the case are that, on November 7, 1997, at about 12.20 P.M., one Prakashbhai Mohanbhai Patel was going on his scooter from Bank of Baroda with a cash of Rs.2,85,000/- belonging to his company, namely, Star Industries Private Limited. At that time, the appellants, in company of other absconding accused persons, chased Prakashbhai Mohanbhai Patel in a Fiat Car, overtook his scooter, intercepted him and made him to fall on the ground. The assailants took away the bag carrying Rs.2,85,000/-, which was fastened on the hook of the scooter. The assailants then fled away in the Fiat Car, which was later on abandoned by them and a revolver was found therefrom. The said Prakashbhai Mohanbbai Patel lodged a First Information Report with Vapi Town Police Station giving details, on basis of which an offence was registered and investigation was made. However, after about seven months from the date of incident, the appellants came to be arrested in another offence and, on basis of some information collected by the Investigating Officer, they were arrested in this case also. Investigation was carried on further. A test identification parade was arranged and the complainant identified the appellants. Having found sufficient evidence against the appellants, the police filed charge sheet in the Court of learned Judicial Magistrate, First Class, who, in turn, committed the case to the Court of Sessions, as the offences were triable exclusively by a Court of Sessions. Sessions Case No.81 of 2000 came to be registered in respect of accused Hasankhan alias Guddukhan Javed, whereas Sessions Case No.124 of 1999 came to be registered against Vithalbhai Narayan Chandekar and Ramesh Kitta Pujari (Appellants in Criminal Appeal No.793 of 2001) and Ramvilas alias Raju Baleshwar Shukla (Appellant in Criminal No.708 of 2001). Both the Sessions Cases came to be disposed of by the impugned common judgment and order. The Sessions Court convicted the appellants for the offences punishable under Sections 395 and 397 of I.P.C. and sentenced them, as stated

above. The fourth accused-Hasankhan alias Guddukhan Javed came to be acquitted.

3. Learned Advocate, Ms. Dutt, submitted that the evidence of the complainant, the Executive Magistrate and the Investigating Officer are the only pieces of evidence which support the prosecution case to whatever extent they can be considered to support. Most of the witnesses have turned hostile. She submitted that the whole incident was over within a few moments. The complainant does not say that he could identify the assailants. After about seven months, when the appellants are apprehended in another case, they are roped into this case as well and, thereafter, test identification parade is conducted. Ms. Dutt submitted that the test identification parade is not properly conducted; that no reliance an be placed on an identification in the test identification parade, which is conducted after seven months; and this being the only piece of evidence, may not be accepted as sufficient to found the conviction therefrom. The conviction, therefore, may be set aside by accepting this appeal.

4. Learned Additional Public Prosecutor, Mr. Abichandani, has opposed this appeal. According to him, although the incident may have lasted for a few moments, the incident being of a very peculiar nature, it having occurred in broad day light, there is sufficient chance of the complainant having identified the assailants and having remembered the faces. The test identification parade is conducted by an independent officer, namely, the Executive Magistrate, before whom the complainant identifies the present appellants as the assailants. The test identification parade is conducted in accordance with rules and law and there is no scope for any contention regarding possibility of any manipulation or mistake. Mr. Abichandani, therefore, urged that the appeal may be dismissed.

5. This Court has considered the evidence in light of the contentions raised before it. As rightly submitted by Ms. Dutta, the complainant-Prakashbhai Mohanbhai Patel, (Ex.12), is the only witness who was present at the time of the incident and had fallen victim to the assailants. If his deposition is seen, he clearly indicates that, while he was going with cash of Rs.2,85,000/- to Bank of Baroda for depositing the same, the incident occurred. He was carrying the cash in a maroon coloured leather bag, which he had fastened to the hook on the scooter. The Fiat Car came from behind, overtook his scooter and applied brake. The left side

door was flung open obstructing the way of the scooter. He, therefore, applied sudden break, due to which he lost his balance and fell down. Then a person came out of the front seat of the Fiat Car and caught hold of him by his neck. Two persons emerged from the rear seat, one of them showed him a dagger whereas the other person snatched the bag on the scooter. He was told in Gujarati to run away or else they will have to push the dagger in. The complainant, therefore, was scared and fled away. He gives the colour of the Fiat Car to be white and the registration number (MTW 3986). He states that the age of the assailants was about 30 years. He raised alarms thereafter. Somehow, his uncle's car came at that time, whereby he reached Vapi Police Station. He states that, he has sustained injuries on his legs and neck. He identifies the accused persons in the Court as well. The complainant is cross-examined and he states that his uncle's vehicle came there, after five minutes since the incident had occurred. He states that, when he first went to the Police Station and gave details about the incident, his signature was not obtained. He had only stated that his money was looted and requested the Police Officer to come with him for searching the same. He also admits that, he along with the Police Officer had rushed to look for the assailants, but failed. He denies the suggestion that, before being taken to the Mamlatdar's office for test identification parade, he was taken to the Police Station. He also denies the suggestion that he had never gone to the test identification parade as a witness. He admits that, in his complaint, he has not disclosed the colour of the car and that he has not given description of the face of the assailants.

6. Witness-Chetanbhai Ramanbhai Desai, another Manager of Star Industries Private Limited is examined at Ex.14. He only says that he received the information about the incident while he was at the factory. He went to Vapi Police Station immediately, where he met the complainant-Prakasbhai, from whom he learnt the details about the incident. The witness says nothing beyond this.

7. Witnesses-Hitesh Nathubhai Patel (Ex.15), Virbahadur Rana (Ex.16), Ramji alias Rameshbhai alias Dilavan Narsinh Bhanushali (Ex.17), Jayrambhai Bhanjibhai Bhanushali (Ex.18), Savitaben alias Saberaben Abdul Sattar (Ex.21), Prashantkumar Thakorbhai Dholakia (Ex.28), Prakashbhai Jayantilal Chauhan (Ex.29), Jayeshbhai Damubhai (Ex.30), Harilal Budhiram Yadav (Ex.33), Kailashnath Rajnath Chaturvedi (Ex.35) and Narendrasinh Jagdevsinh Jhala (Ex.38) have not supported

the prosecution case and have been declared hostile by the prosecution.

8. Witness-Sawantshah Behramshah Todiwala, (Ex.20), says that he heard shouts in between 12.15 and 12.30 hours on 7.11.1997, while he was at home. Then he says that, he heard the sound of a scooter dashing and, therefore, he came out of his house to notice that one person was lying there, whose name is Prakashbhai. Prakashbhai was scared. Prakashbhai told him that, he was going to the factory after withdrawing money from the bank and one white Fiat Car came from behind, knocked him down and went away with the cash. The assailants had intimidated him. During cross-examination, he denies that Prakashbhai had not disclosed that the persons who had got down from the car had looted him.

9. The next important witness is Natubhai Ukkadbhai Chaudhari, Executive Magistrate, who conducted the test identification parade in presence of Panch witnesses Prashant Thakordas Dholakia and Prakash Jayantilal Chauhan, who turned hostile and did not support the prosecution. The Executive Magistrate states that the test identification parade was conducted on 4.4.1998, at 5.00 P.M. He states that the Panch witnesses and the assailants were made to stand in a row with similar looking persons. The complainant was earlier made to sit in another room. After the row was made, he was called and he identified the accused persons. This witness has been cross-examined. During cross-examination, he admits that he had not seen the accused persons prior to the selecting of dummies nor did he have any details about the description of stature, eyes, hair, clothe, etc., but he says that the Jailor had gone to call the dummies. He admits that a Panchnama mentioning the details of chronological order in which the dummies and the accused persons stood in the row is not recorded. He admits that none of the accused persons were brought in a Nakab.

10. Investigating Officer-Kirtikumar Manchabhai Chaudhary is examined at Ex.42.

11. If the above evidence is seen, it is clear that the incident occurred in a broad day light. The complainant-Prakashbhai has lodged the complaint immediately after the incident, wherein details are given. It is true that he has not, in terms, given the description of the assailants, but there is no reason to disbelieve identification of the accused persons by this complainant before the Executive Magistrate since he has no reason to falsely implicate the appellants nor there

is any material to indicate any chances of any mistaken identity. There is no cross-examination of the Executive Magistrate or the complainant to indicate that prior to the test identification parade, the complainant was shown the accused persons or the appellants. The suggestion that it would have been possible for the complainant to see the accused persons has been negatived by the witness. It is true that the incident lasted for a few moments, but that by itself is not sufficient to doubt the veracity of the complainant or his ability to identify the assailants when such things occur, they have the effect of leaving an unerraseable impression in the mind of the victim. The Trial Court has considered all these aspects and has accepted the prosecution evidence to connect the appellants with the crime. There appears no reason to disagree with the finding of the Trial Court. The conviction recorded is well founded and after proper appreciation of evidence and, as such, the appeals must fail.

12. The appeals are dismissed. The judgment and order passed by the learned Additional Sessions Judge, Valsad (Camp), in Sessions Case No.124 of 1999, dated the 28th June, 2001 is hereby confirmed.

[A.L. DAVE, J.]

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